



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

JAN 22 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5934 9779

Mr. Jacob S. Tawil, P.E., Commissioner
Department of Public Works
City of Middletown
16 James Street
Middletown, New York 10940-1587

Re: Fourth Amended Administrative Order CWA-02-2015-3027
City of Middletown
SPDES Permit No. NY0026328

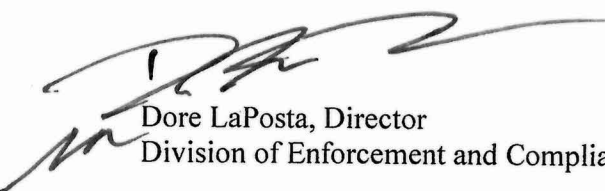
Dear Commissioner Tawil:

Please find enclosed a Fourth Amended Administrative Order ("Fourth Amended Order"), which the United States Environmental Protection Agency ("EPA"), Region 2 is issuing to the City of Middletown ("Middletown") pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. §1319. This Fourth Amended Order amends EPA's Administrative Order CWA-02-2013-3058, Amended Administrative Order CWA-02-2014-3049, Second Amended Administrative Order CWA-02-2014-3056, and Third Amended Administrative Order CWA-02-2015-3019, issued to Middletown on September 26, 2013, July 1, 2014, August 14, 2014, and November 24, 2014, respectively. The Orders incorporate a compliance schedule requiring Middletown to develop and submit an Industrial Pretreatment Program to EPA for approval. This Fourth Amended Order extends the last two deadlines in the compliance schedule to allow additional time for thorough review of the submission and response. The newly proposed schedule was agreed upon by EPA and Middletown.

Enclosed are two originals of the Fourth Amended Order. Please acknowledge receipt on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the Fourth Amended Order may subject Middletown to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

If you have any questions regarding the enclosed Amended Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, NYSDEC (w/enclosure)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2
290 Broadway
New York, New York 10007-1866

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IN THE MATTER OF

City of Middletown
Department of Public Works
16 James Street
Middletown, New York 10940-1587

SPDES Permit No. NY0026328

Proceeding pursuant to §309(a) of the
Clean Water Act, 33 U.S.C. §1319(a)

FOURTH AMENDED
ADMINISTRATIVE ORDER
CWA-02-2015-3027

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This Fourth Amended Administrative Order amends the Order CWA-02-2013-3058 ("2013 Order") as well as the Amended Administrative Order, CWA-02-2014-3049 ("2014 Amended Order"), Second Amended Administrative Order, CWA-02-2014-3056 ("Second Amended Order"), and Third Amended Administrative Order, CWA-02-2015-3019 ("Third Amended Order"). Attachments 1, 2, 3, and 4.

STATUTORY AUTHORITY

1. This Fourth Amended Administrative Order is made pursuant to Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.
2. Section 309(a) of the CWA, 33 U.S.C. §1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. §1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

FINDINGS

The following Findings are added to the Findings in the Third Amended Order, which incorporates by reference the Findings of Violation in the 2013 Order, the Findings in the 2014 Amended Order, and the Findings in the Second Amended Order:

1. Paragraph 22 is added as follows:

“On November 26, 2014, EPA, by email, provided the City of Middletown (“Middletown” or “Respondent”) a response to its proposal to forego monthly average limits and just have daily maximum limits as local limits. EPA provided a table which included limits that are a mixture of the existing local limits, and those calculated as more stringent by the technical analysis.”

2. Paragraph 23 is added as follows:

“By email on November 26, 2014, Middletown’s counsel informed EPA counsel that he will forward EPA’s email to the Middletown team for its review and comments, if any. Middletown’s counsel also indicated that it will need another extension on the time frame in the order. Specifically, Middletown proposed at least a 30-day extension for the submittal deadline of an Industrial Pretreatment Program to Middletown’s municipal legislative body for approval and for its submittal deadline of a complete Industrial Pretreatment Program for EPA approval.”

3. Paragraph 24 is added as follows:

“By email dated December 30, 2014, Middletown accepted EPA’s proposal outlined in its November 26, 2014 email. Middletown again requested an extension on the time frame in the order.”

4. Paragraph 25 is added as follows:

“By email dated January 5, 2015, EPA agreed to Middletown’s extension request.”

SECTION 309(a)(3) COMPLIANCE ORDER

1. Paragraph 2.F. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be replaced with the following:

“By **April 30, 2015**, the City of Middletown shall submit an Industrial Pretreatment Program submission to its municipal legislative body for approval.”

2. Paragraph 2.G. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be replaced with the following:

“By **June 30, 2015**, the City of Middletown shall submit to EPA a complete Industrial Pretreatment Program submission for approval.”

GENERAL PROVISIONS

1. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 C.F.R. §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. The Respondent shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer, regarding the Ordered Provisions, with the following designated Agency representative:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866
(212) 637-4244

3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§701-706.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
5. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. §1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Compliance Order.
6. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

7. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 1/22/15

Signed: 

Dore LaPosta, Director

Division of Enforcement and
Compliance Assistance